

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the First Amended
Accusation Against:**

TODD DAVID SPENCER, M.D.

**Physician's and Surgeon's
Certificate No. G 70273**

Respondent

Case No. 800-2015-018219

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 26, 2019.

IT IS SO ORDERED: June 27, 2019.

MEDICAL BOARD OF CALIFORNIA



**Kristina D. Lawson, J.D., Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 GLORIA L. CASTRO
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9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the First Amended Accusation
Against:

14 **TODD DAVID SPENCER, M.D.**
15 **11348 N Via Ventana Way**
16 **Fresno CA 93730-8834**

17 **Physician's and Surgeon's Certificate No.**
18 **G70273**

19 Respondent.

Case No. 800-2015-018219

OAH No. 2017120380

20 **STIPULATED SETTLEMENT AND**
21 **DISCIPLINARY ORDER**

22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
entitled proceedings that the following matters are true:

23 PARTIES

24 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
25 of California (Board). She brought this action solely in her official capacity and is represented in
26 this matter by Xavier Becerra, Attorney General of the State of California, by Steve Diehl,
27 Supervising Deputy Attorney General.

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2. Respondent Todd David Spencer, M.D. (Respondent) is represented in this proceeding by attorney George L. Strasser, Esq., whose address is: 7690 North Palm Ave., Suite 105, Fresno, CA 93711.

3. On or about November 13, 1990, the Board issued Physician's and Surgeon's Certificate No. G 70273 to Todd David Spencer, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. 800-2015-018219, and will expire on May 28, 2019, unless renewed.

JURISDICTION

4. First Amended Accusation No. 800-2015-018219 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on June 27, 2018. The First Amended Accusation was deemed controverted pursuant to Government Code Section 11507 in light of the fact that Respondent timely filed his Notice of Defense contesting the original Accusation No. 800-2015-018219.

5. A copy of First Amended Accusation No. 800-2015-018219 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 800-2015-018219. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision;

1 and all other rights accorded by the California Administrative Procedure Act and other applicable
2 laws.

3 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
4 every right set forth above.

5 CULPABILITY

6 9. Respondent understands and agrees that the charges and allegations in First Amended
7 Accusation No. 800-2015-018219, if proven at a hearing, constitute cause for imposing discipline
8 upon his Physician's and Surgeon's Certificate.

9 10. For the purpose of resolving the First Amended Accusation without the expense and
10 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
11 establish a prima facie factual basis for the charges in the First Amended Accusation, and that
12 Respondent hereby gives up his right to contest those charges. Respondent agrees that if he ever
13 petitions for early termination or modification of probation, or if the Board ever petitions for
14 revocation of probation, all of the charges and allegations contained in First Amended Accusation
15 No. 800-2015-018219 shall be deemed true, correct and fully admitted by respondent for
16 purposes of that proceeding or any other licensing proceeding involving respondent in the State of
17 California.

18 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
19 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
20 Disciplinary Order below.

21 CONTINGENCY

22 12. This stipulation shall be subject to approval by the Medical Board of California.
23 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
24 Board of California may communicate directly with the Board regarding this stipulation and
25 settlement, without notice to or participation by Respondent or his counsel. By signing the
26 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
27 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
28 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary

1 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
2 action between the parties, and the Board shall not be disqualified from further action by having
3 considered this matter.

4 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
5 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
6 signatures thereto, shall have the same force and effect as the originals.

7 14. In consideration of the foregoing admissions and stipulations, the parties agree that
8 the Board may, without further notice or formal proceeding, issue and enter the following
9 Disciplinary Order:

10 **DISCIPLINARY ORDER**

11 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 70273 issued
12 to Respondent Todd David Spencer, M.D. is revoked. However, the revocation is stayed and
13 Respondent is placed on probation for seven (7) years on the following terms and conditions.

14 1. **PROHIBITED PRACTICE.** During the first year of probation, Respondent is
15 prohibited from practicing medicine, except that Respondent may (1) practice in a substance
16 abuse treatment center, (2) do insurance billing review, utilization review, and/or medical record
17 review, and/or (3) practice general diagnostic radiology without direct patient contact, except as
18 described below. Respondent is specifically prohibited from practicing interventional radiology
19 during the first year of probation. For purposes of this restriction, the prohibited interventional
20 radiology shall include, angiography, balloon angioplasty, biliary drainage and stenting, central
21 venous access, chemoembolization, gastrostomy tube placement, hemodialysis access
22 maintenance, treatment of renal hypertension with angioplasty, MR-guided ultrasound of the
23 uterus, (also known as high intensity focused ultrasound or HIFU), radiofrequency ablation,
24 thrombolysis at the site of a clot, TIPS (transjugular intrahepatic portosystemic shunt), treatment
25 of urinary tract obstruction, uterine artery embolization, uterine fibroid embolization, varicocele
26 embolization, vena cava filter placement or removal, and venous embolization for treatment of
27 pelvic congestion. Permitted general radiology shall include the review of all types of x-rays, all
28 types of scans, and basic radiology procedures such as infection and abscess drainage, and simple

1 radiology guided biopsy. After the effective date of this decision, all general radiology patients
2 being treated by Respondent for permitted procedures shall be notified that Respondent is
3 prohibited from practicing interventional radiology as described above, and that Respondent's
4 practice is limited as described above. Any new patient who is going to undergo a permitted
5 procedure must be provided the notification at the time of their initial appointment. This
6 notification requirement shall not apply to situations where Respondent does not have direct
7 patient contact (such as simply reading an x-ray).

8 Respondent shall maintain a log of all patients to whom the required oral notification was
9 made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's
10 medical record number, if available; 3) the full name of the person making the notification; 4) the
11 date the notification was made; and 5) a description of the notification given. Respondent shall
12 keep this log in a separate file or ledger, in chronological order, shall make the log available for
13 immediate inspection and copying on the premises at all times during business hours by the Board
14 or its designee, and shall retain the log for the entire term of probation.

15 2. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
16 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice
17 where: 1) Respondent merely shares office space with another physician but is not affiliated for
18 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
19 location.

20 If Respondent fails to establish a practice with another physician or secure employment in
21 an appropriate practice setting within 60 calendar days of the effective date of this Decision,
22 Respondent shall receive a notification from the Board or its designee to cease the practice of
23 medicine within three (3) calendar days after being so notified. The Respondent shall not resume
24 practice until an appropriate practice setting is established.

25 If, during the course of the probation, the Respondent's practice setting changes and the
26 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent
27 shall notify the Board or its designee within five (5) calendar days of the practice setting change.
28 If Respondent fails to establish a practice with another physician or secure employment in an

1 appropriate practice setting within 60 calendar days of the practice setting change, Respondent
2 shall receive a notification from the Board or its designee to cease the practice of medicine within
3 three (3) calendar days after being so notified. The Respondent shall not resume practice until an
4 appropriate practice setting is established.

5 3. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain
6 completely from the personal use or possession of controlled substances as defined in the
7 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and
8 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not
9 apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide
10 illness or condition.

11 Within 15 calendar days of receiving any lawfully prescribed medications, Respondent
12 shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone
13 number; medication name, strength, and quantity; and issuing pharmacy name, address, and
14 telephone number.

15 4. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the
16 use of products or beverages containing alcohol.

17 5. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
18 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
19 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
20 Respondent shall participate in and successfully complete that program. Respondent shall
21 provide any information and documents that the program may deem pertinent. Respondent shall
22 successfully complete the classroom component of the program not later than six (6) months after
23 Respondent's initial enrollment, and the longitudinal component of the program not later than the
24 time specified by the program, but no later than one (1) year after attending the classroom
25 component. The professionalism program shall be at Respondent's expense and shall be in
26 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

27 A professionalism program taken after the acts that gave rise to the charges in the
28 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board

1 or its designee, be accepted towards the fulfillment of this condition if the program would have
2 been approved by the Board or its designee had the program been taken after the effective date of
3 this Decision.

4 Respondent shall submit a certification of successful completion to the Board or its
5 designee not later than 15 calendar days after successfully completing the program or not later
6 than 15 calendar days after the effective date of the Decision, whichever is later.

7 6. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days
8 of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment
9 program approved in advance by the Board or its designee. Respondent shall successfully
10 complete the program not later than six (6) months after Respondent's initial enrollment unless
11 the Board or its designee agrees in writing to an extension of that time.

12 The program shall consist of a comprehensive assessment of Respondent's physical and
13 mental health and the six general domains of clinical competence as defined by the Accreditation
14 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to
15 Respondent's current or intended area of practice. The program shall take into account data
16 obtained from the pre-assessment, self-report forms and interview, and the Decision(s),
17 Accusation(s), and any other information that the Board or its designee deems relevant. The
18 program shall require Respondent's on-site participation for a minimum of three (3) and no more
19 than five (5) days as determined by the program for the assessment and clinical education
20 evaluation. Respondent shall pay all expenses associated with the clinical competence
21 assessment program.

22 At the end of the evaluation, the program will submit a report to the Board or its designee
23 which unequivocally states whether the Respondent has demonstrated the ability to practice
24 safely and independently. Based on Respondent's performance on the clinical competence
25 assessment, the program will advise the Board or its designee of its recommendation(s) for the
26 scope and length of any additional educational or clinical training, evaluation or treatment for any
27 medical condition or psychological condition, or anything else affecting Respondent's practice of
28 medicine. Respondent shall comply with the program's recommendations.

1 Determination as to whether Respondent successfully completed the clinical competence
2 assessment program is solely within the program's jurisdiction.

3 Except as provided in Paragraph 1, Respondent shall not practice medicine until
4 Respondent has successfully completed the program and has been so notified by the Board or its
5 designee in writing.

6 7. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision,
7 Respondent shall submit to the Board or its designee for prior approval the name and
8 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who
9 has a doctoral degree in psychology and at least five years of postgraduate experience in the
10 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall
11 undergo and continue psychotherapy treatment, including any modifications to the frequency of
12 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

13 The psychotherapist shall consider any information provided by the Board or its designee
14 and any other information the psychotherapist deems relevant and shall furnish a written
15 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
16 psychotherapist with any information and documents that the psychotherapist may deem
17 pertinent.

18 Respondent shall have the treating psychotherapist submit quarterly status reports to the
19 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric
20 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of
21 probation, Respondent is found to be mentally unfit to resume the practice of medicine without
22 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
23 period of probation shall be extended until the Board determines that Respondent is mentally fit
24 to resume the practice of medicine without restrictions.

25 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

26 8. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)
27 days of the effective date of this Decision, Respondent shall provide to the Board the names,
28 physical addresses, mailing addresses, and telephone numbers of any and all employers and

1 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's
2 worksite monitor, and Respondent's employers and supervisors to communicate regarding
3 Respondent's work status, performance, and monitoring.

4 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or
5 Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff
6 privileges.

7 9. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
8 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
9 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
10 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall
11 make daily contact with the Board or its designee to determine whether biological fluid testing is
12 required. Respondent shall be tested on the date of the notification as directed by the Board or its
13 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at
14 any time, including weekends and holidays. Except when testing on a specific date as ordered by
15 the Board or its designee, the scheduling of biological fluid testing shall be done on a random
16 basis. The cost of biological fluid testing shall be borne by the Respondent.

17 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.
18 During the second year of probation and for the duration of the probationary term, up to five (5)
19 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no
20 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing
21 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number
22 of random tests to the first-year level of frequency for any reason.

23 Prior to practicing medicine, Respondent shall contract with a laboratory or service,
24 approved in advance by the Board or its designee, that will conduct random, unannounced,
25 observed, biological fluid testing and meets all of the following standards:

- 26 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry
27 Association or have completed the training required to serve as a collector for the United
28 States Department of Transportation.

1 (b) Its specimen collectors conform to the current United States Department of
2 Transportation Specimen Collection Guidelines.

3 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published
4 by the United States Department of Transportation without regard to the type of test
5 administered.

6 (d) Its specimen collectors observe the collection of testing specimens.

7 (e) Its laboratories are certified and accredited by the United States Department of Health
8 and Human Services.

9 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day
10 of receipt and all specimens collected shall be handled pursuant to chain of custody
11 procedures. The laboratory shall process and analyze the specimens and provide legally
12 defensible test results to the Board within seven (7) business days of receipt of the
13 specimen. The Board will be notified of non-negative results within one (1) business day
14 and will be notified of negative test results within seven (7) business days.

15 (g) Its testing locations possess all the materials, equipment, and technical expertise
16 necessary in order to test Respondent on any day of the week.

17 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens
18 for the detection of alcohol and illegal and controlled substances.

19 (i) It maintains testing sites located throughout California.

20 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line
21 computer database that allows the Respondent to check in daily for testing.

22 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff
23 access to drug test results and compliance reporting information that is available 24 hours a
24 day.

25 (l) It employs or contracts with toxicologists that are licensed physicians and have
26 knowledge of substance abuse disorders and the appropriate medical training to interpret
27 and evaluate laboratory biological fluid test results, medical histories, and any other
28 information relevant to biomedical information.

1 (m) It will not consider a toxicology screen to be negative if a positive result is obtained
2 while practicing, even if the Respondent holds a valid prescription for the substance.

3 Prior to changing testing locations for any reason, including during vacation or other travel,
4 alternative testing locations must be approved by the Board and meet the requirements above.

5 The contract shall require that the laboratory directly notify the Board or its designee of
6 non-negative results within one (1) business day and negative test results within seven (7)
7 business days of the results becoming available. Respondent shall maintain this laboratory or
8 service contract during the period of probation.

9 A certified copy of any laboratory test result may be received in evidence in any
10 proceedings between the Board and Respondent.

11 If a biological fluid test result indicates Respondent has used, consumed, ingested, or
12 administered to himself or herself a prohibited substance, the Board shall order Respondent to
13 cease practice and instruct Respondent to leave any place of work where Respondent is practicing
14 medicine or providing medical services. The Board shall immediately notify all of Respondent's
15 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or
16 provide medical services while the cease-practice order is in effect.

17 A biological fluid test will not be considered negative if a positive result is obtained while
18 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited
19 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

20 After the issuance of a cease-practice order, the Board shall determine whether the positive
21 biological fluid test is in fact evidence of prohibited substance use by consulting with the
22 specimen collector and the laboratory, communicating with the licensee, his treating physician(s),
23 other health care provider, or group facilitator, as applicable.

24 For purposes of this condition, the terms "biological fluid testing" and "testing" mean the
25 acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

26 For purposes of this condition, the term "prohibited substance" means an illegal drug, a
27 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by
28 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been

1 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

2 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited
3 substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the
4 Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to
5 any other terms or conditions the Board determines are necessary for public protection or to
6 enhance Respondent's rehabilitation.

7 10. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of
8 the effective date of this Decision, Respondent shall submit to the Board or its designee, for its
9 prior approval, the name of a substance abuse support group which he shall attend for the duration
10 of probation. Respondent shall attend substance abuse support group meetings at least once per
11 week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse
12 support group meeting costs.

13 The facilitator of the substance abuse support group meeting shall have a minimum of three
14 (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed
15 or certified by the state or nationally certified organizations. The facilitator shall not have a
16 current or former financial, personal, or business relationship with Respondent within the last five
17 (5) years. Respondent's previous participation in a substance abuse group support meeting led by
18 the same facilitator does not constitute a prohibited current or former financial, personal, or
19 business relationship.

20 The facilitator shall provide a signed document to the Board or its designee showing
21 Respondent's name, the group name, the date and location of the meeting, Respondent's
22 attendance, and Respondent's level of participation and progress. The facilitator shall report any
23 unexcused absence by Respondent from any substance abuse support group meeting to the Board,
24 or its designee, within twenty-four (24) hours of the unexcused absence.

25 11. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty
26 (30) days of the effective date of this Decision, Respondent shall submit to the Board or its
27 designee for prior approval as a worksite monitor, the name and qualifications of one or more
28 licensed physician and surgeon, other licensed health care professional if no physician and

1 surgeon is available, or, as approved by the Board or its designee, a person in a position of
2 authority who is capable of monitoring the Respondent at work.

3 The worksite monitor shall not have a current or former financial, personal, or familial
4 relationship with Respondent, or any other relationship that could reasonably be expected to
5 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its
6 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite
7 monitor, this requirement may be waived by the Board or its designee, however, under no
8 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

9 The worksite monitor shall have an active unrestricted license with no disciplinary action
10 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms
11 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth
12 by the Board or its designee.

13 Respondent shall pay all worksite monitoring costs.

14 The worksite monitor shall have face-to-face contact with Respondent in the work
15 environment on as frequent a basis as determined by the Board or its designee, but not less than
16 once per week; interview other staff in the office regarding Respondent's behavior, if requested
17 by the Board or its designee; and review Respondent's work attendance.

18 The worksite monitor shall verbally report any suspected substance abuse to the Board and
19 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected
20 substance abuse does not occur during the Board's normal business hours, the verbal report shall
21 be made to the Board or its designee within one (1) hour of the next business day. A written
22 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and
23 any other information deemed important by the worksite monitor shall be submitted to the Board
24 or its designee within 48 hours of the occurrence.

25 The worksite monitor shall complete and submit a written report monthly or as directed by
26 the Board or its designee which shall include the following: (1) Respondent's name and
27 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)
28 the worksite monitor's license number, if applicable; (4) the location or location(s) of the

1 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the
2 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;
3 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can
4 lead to suspected substance abuse by Respondent. Respondent shall complete any required
5 consent forms and execute agreements with the approved worksite monitor and the Board, or its
6 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

7 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)
8 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior
9 approval, the name and qualifications of a replacement monitor who will be assuming that
10 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a
11 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the
12 monitor, Respondent shall receive a notification from the Board or its designee to cease the
13 practice of medicine within three (3) calendar days after being so notified. Respondent shall
14 cease the practice of medicine until a replacement monitor is approved and assumes monitoring
15 responsibility.

16 12. VIOlation OF PROBATION CONDITION FOR SUBSTANCE ABUSING
17 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of
18 probation.

19 A. If Respondent commits a major violation of probation as defined by section
20 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take
21 one or more of the following actions:

22 (1) Issue an immediate cease-practice order and order Respondent to undergo a clinical
23 diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of
24 Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice
25 order issued by the Board or its designee shall state that Respondent must test negative for at least
26 a month of continuous biological fluid testing before being allowed to resume practice. For
27 purposes of determining the length of time a Respondent must test negative while undergoing
28 continuous biological fluid testing following issuance of a cease-practice order, a month is

1 defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until
2 notified in writing by the Board or its designee that he may do so.

3 (2) Increase the frequency of biological fluid testing.

4 (3) Refer Respondent for further disciplinary action, such as suspension, revocation, or
5 other action as determined by the Board or its designee.

6 B. If Respondent commits a minor violation of probation as defined by section
7 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take
8 one or more of the following actions:

9 (1) Issue a cease-practice order;

10 (2) Order practice limitations;

11 (3) Order or increase supervision of Respondent;

12 (4) Order increased documentation;

13 (5) Issue a citation and fine, or a warning letter;

14 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in
15 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
16 Regulations, at Respondent's expense;

17 (7) Take any other action as determined by the Board or its designee.

18 C. Nothing in this Decision shall be considered a limitation on the Board's authority
19 to revoke Respondent's probation if he has violated any term or condition of probation. If
20 Respondent violates probation in any respect, the Board, after giving Respondent notice and the
21 opportunity to be heard, may revoke probation and carry out the disciplinary order that was
22 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed
23 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
24 is final, and the period of probation shall be extended until the matter is final.

25 13. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
26 Respondent shall provide a true copy of this Decision and First Amended Accusation to the Chief
27 of Staff or the Chief Executive Officer at every hospital where privileges or membership are
28 extended to Respondent, at any other facility where Respondent engages in the practice of

1 medicine, including all physician and locum tenens registries or other similar agencies, and to the
2 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage
3 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within
4 15 calendar days.

5 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

6 14. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
7 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
8 advanced practice nurses.

9 15. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
10 governing the practice of medicine in California and remain in full compliance with any court
11 ordered criminal probation, payments, and other orders.

12 16. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
13 under penalty of perjury on forms provided by the Board, stating whether there has been
14 compliance with all the conditions of probation.

15 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
16 of the preceding quarter.

17 17. GENERAL PROBATION REQUIREMENTS.

18 Compliance with Probation Unit

19 Respondent shall comply with the Board's probation unit.

20 Address Changes

21 Respondent shall, at all times, keep the Board informed of Respondent's business and
22 residence addresses, email address (if available), and telephone number. Changes of such
23 addresses shall be immediately communicated in writing to the Board or its designee. Under no
24 circumstances shall a post office box serve as an address of record, except as allowed by Business
25 and Professions Code section 2021(b).

26 Place of Practice

27 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
28 of residence, unless the patient resides in a skilled nursing facility or other similar licensed

1 facility.

2 License Renewal

3 Respondent shall maintain a current and renewed California physician's and surgeon's
4 license.

5 Travel or Residence Outside California

6 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
7 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
8 (30) calendar days.

9 In the event Respondent should leave the State of California to reside or to practice
10 ,Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
11 departure and return.

12 18. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
13 available in person upon request for interviews either at Respondent's place of business or at the
14 probation unit office, with or without prior notice throughout the term of probation.

15 19. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
16 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
17 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
18 defined as any period of time Respondent is not practicing medicine as defined in Business and
19 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
20 patient care, clinical activity or teaching, or other activity as approved by the Board. If
21 Respondent resides in California and is considered to be in non-practice, Respondent shall
22 comply with all terms and conditions of probation. All time spent in an intensive training
23 program which has been approved by the Board or its designee shall not be considered non-
24 practice and does not relieve Respondent from complying with all the terms and conditions of
25 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
26 on probation with the medical licensing authority of that state or jurisdiction shall not be
27 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
28 period of non-practice.

1 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
2 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
3 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
4 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
5 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

6 Respondent's period of non-practice while on probation shall not exceed two (2) years.

7 Periods of non-practice will not apply to the reduction of the probationary term.

8 Periods of non-practice for a Respondent residing outside of California will relieve
9 Respondent of the responsibility to comply with the probationary terms and conditions with the
10 exception of this condition and the following terms and conditions of probation: Obey All Laws;
11 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
12 Controlled Substances; and Biological Fluid Testing..

13 20. COMPLETION OF PROBATION. Respondent shall comply with all financial
14 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
15 completion of probation. Upon successful completion of probation, Respondent's certificate shall
16 be fully restored.

17 21. LICENSE SURRENDER. Following the effective date of this Decision, if
18 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
19 the terms and conditions of probation, Respondent may request to surrender his license. The
20 Board reserves the right to evaluate Respondent's request and to exercise its discretion in
21 determining whether or not to grant the request, or to take any other action deemed appropriate
22 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
23 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
24 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
25 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
26 application shall be treated as a petition for reinstatement of a revoked certificate.

27 22. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
28 with probation monitoring each and every year of probation, as designated by the Board, which

1 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
2 California and delivered to the Board or its designee no later than January 31 of each calendar
3 year.

4
5 ACCEPTANCE

6 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
7 discussed it with my attorney, George L. Strasser, Esq. I understand the stipulation and the effect
8 it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement
9 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
10 Decision and Order of the Medical Board of California.

11
12 DATED: 4/18/19


13 TODD DAVID SPENCER, M.D.
14 *Respondent*

15 I have read and fully discussed with Respondent Todd David Spencer, M.D. the terms and
16 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
17 I approve its form and content.

18 DATED: April 18, 2019


19 GEORGE L. STRASSER, ESQ.
20 *Attorney for Respondent*

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 5/23/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
GLORIA L. CASTRO
Senior Assistant Attorney General


STEVE DIEHL
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2015-018219

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 STEVE DIEHL
Deputy Attorney General
4 State Bar No. 235250
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5 2550 Mariposa Mall, Room 5090
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 27 20 18
BY Sara Pasion ANALYST

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation
12 Against:

13 **TODD DAVID SPENCER, M.D.**
11348 N Via Ventana Way
14 Fresno, California 93730

15 Physician's and Surgeon's Certificate No.
G70273

16 Respondent.

Case No. 800-2015-018219

FIRST AMENDED ACCUSATION

18 Complainant alleges:

19 **PARTIES**

20
21 1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation solely in
22 her official capacity as the Executive Director of the Medical Board of California, Department of
23 Consumer Affairs (Board).

24 2. On or about November 13, 1990, the Medical Board issued Physician's and Surgeon's
25 Certificate Number G70273 to Todd David Spencer, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on October 31, 2018, unless renewed.

28 \\\

JURISDICTION

3. This First Amended Accusation, which supersedes the Accusation filed on October 25, 2017, in the above entitled action, is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

5. Section 2236 of the Code states:

“(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this

1 chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction
2 occurred.

3 “(b) The district attorney, city attorney, or other prosecuting agency shall notify the
4 Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor
5 immediately upon obtaining information that the defendant is a licensee. The notice shall identify
6 the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall
7 also notify the clerk of the court in which the action is pending that the defendant is a licensee,
8 and the clerk shall record prominently in the file that the defendant holds a license as a physician
9 and surgeon.

10 “(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours
11 after the conviction, transmit a certified copy of the record of conviction to the board. The
12 division may inquire into the circumstances surrounding the commission of a crime in order to fix
13 the degree of discipline or to determine if the conviction is of an offense substantially related to
14 the qualifications, functions, or duties of a physician and surgeon.

15 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
16 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
17 shall be conclusive evidence of the fact that the conviction occurred.”

18 6. Section 2239 of the Code states:

19 “(a) The use or prescribing for or administering to himself or herself, of any controlled
20 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
21 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
22 any other person or to the public, or to the extent that such use impairs the ability of the licensee
23 to practice medicine safely or more than one misdemeanor or any felony involving the use,
24 consumption, or self-administration of any of the substances referred to in this section, or any
25 combination thereof, constitutes unprofessional conduct. The record of the conviction is
26 conclusive evidence of such unprofessional conduct.

27 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
28 deemed to be a conviction within the meaning of this section. The Medical Board may order

1 discipline of the licensee in accordance with Section 2227 or the Medical Board may order the
2 denial of the license when the time for appeal has elapsed or the judgment of conviction has been
3 affirmed on appeal or when an order granting probation is made suspending imposition of
4 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
5 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,
6 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
7 indictment.”

8 7. Section 822 of the Code states:

9 “If a licensing agency determines that its licentiate’s ability to practice his or her
10 profession safely is impaired because the licentiate is mentally ill, or physically ill affecting
11 competency, the licensing agency may take action by any one of the following methods:

12 “(a) Revoking the licentiate’s certificate or license.

13 “(b) Suspending the licentiate’s right to practice.

14 “(c) Placing the licentiate on probation.

15 “(d) Taking such other action in relation to the licentiate as the licensing agency in its
16 discretion deems proper.

17 “The licensing section shall not reinstate a revoked or suspended certificate or license until
18 it has received competent evidence of the absence or control of the condition which caused its
19 action and until it is satisfied that with due regard for the public health and safety the person’s
20 right to practice his or her profession may be safely reinstated.”

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Conviction of a Substantially Related Crime)**

23 8. Respondent is subject to disciplinary action under section 2236 in that he was
24 convicted of a crime that is substantially related to the qualifications, functions, or duties of a
25 physician and surgeon. The circumstances are as follows:

26 9. On or about November 12, 2013, at approximately 9:30 p.m., Respondent lost control
27 of his vehicle and struck two curbs and a tree. Respondent abandoned his vehicle and was found
28 walking away from the collision. A police officer dispatched to the scene noted that Respondent

1 was sweating, despite an ambient temperature of 57 degrees Fahrenheit, that Respondent's pupils
2 were restricted with no reaction to light, that his eyelids were droopy and his eyes were red and
3 watery, that his speech was slow, and that his body movements were slow and lethargic. The
4 officer opined that Respondent was under the influence of a narcotic analgesic. A blood sample
5 taken from Respondent at 11:07 p.m. tested positive for the opiates Hydrocodone and
6 Hydromorphone, as well as Benzoylcegonine (a metabolite of cocaine.)

7 10. On or about January 6, 2014, in Fresno Superior Court case number M14910808,
8 Respondent was charged with a misdemeanor violation of Vehicle Code section 23152,
9 subdivision (b), driving with a 0.08% or higher blood alcohol level, and a misdemeanor violation
10 of Vehicle Code section 2002, hit and run driving, in connection with the events of November 12,
11 2013.

12 11. On or about October 15, 2015, in Fresno Superior Court case number M14910808,
13 Respondent entered a plea of no contest to an amended charge, alleging a misdemeanor violation
14 of Vehicle Code section 23103, pursuant to Vehicle Code section 23103.5, alcohol-related
15 reckless driving. The remaining charges were dismissed. Respondent was sentenced to three
16 years probation with various terms and conditions.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Excessive Use of Drugs or Alcohol)**

19 12. Respondent is subject to disciplinary action under section 2239 in that he used
20 controlled substances and alcohol to the extent, or in such a manner, as to be dangerous or
21 injurious to himself, or to any other person or to the public. The circumstances are set forth in
22 paragraphs 9 through 11, above. Additional circumstances are as follows:

23 13. In or about January, 2012, Respondent retired from his practice as a radiologist.
24 Upon retiring, Respondent began drinking alcohol with increasing frequency and quantity.
25 Additionally, he resumed using opiates recreationally, after having previously been treated for
26 opiate addiction in 2010-2011. In or about July 2012, Respondent separated from his wife, in part
27 because his drinking had escalated. In 2013, Respondent began using cocaine while drinking. In
28 2014, Respondent's drinking increased to the point where his first drink of the day was first thing

1 in the morning, and the quantity of alcohol he was consuming was approximately 20 drinks per
2 day.

3 14. In or about January, 2016, Respondent entered drug and alcohol rehabilitation at the
4 Betty Ford Clinic. After completing 30 days in the facility, Respondent promptly resumed using
5 alcohol. Respondent returned to the Betty Ford clinic, completed a 30-day outpatient program,
6 and was discharged in or about March, 2016. Respondent resumed drinking within weeks of his
7 discharge.

8 15. In or about June, 2016, Respondent returned to the practice of medicine, in the hope
9 of providing structure in his life. Respondent continued to drink alcohol in the evenings. On or
10 about April 17, 2017, Respondent was suspended from Medicare, and went on administrative
11 leave. Within weeks, Respondent was again drinking heavily. In or about May, 2017,
12 Respondent resumed using cocaine. On or about June 2, 2017, following an extended period of
13 drinking and using cocaine, Respondent was robbed by his cocaine dealer. He entered a 24-hour
14 detoxification program on or about June 4, 2017, and entered an extended drug and alcohol
15 rehabilitation program on or about June 7, 2017.

16 **FIRST CAUSE FOR ACTION**

17 **(Impairment)**

18 16. Respondent is subject to disciplinary action under section 822 in that his ability to
19 practice medicine safely is impaired because of a mental illness or physical illness affecting
20 competency. The circumstances are as follows:

21 17. On or about August 30, 2017, Respondent submitted to a mental examination by a
22 Board-appointed psychiatrist. The examiner concluded that Respondent has severe Alcohol Use
23 Disorder, Cocaine Use Disorder, and Opiate Use Disorder, each of which are "in early remission
24 in a controlled environment," and each of which is a condition that "would impact his ability to
25 safely engage in the practice of medicine if he should relapse from his current abstinent state."
26 The examiner stated that Respondent is "unable to practice safely at this time without any
27 restrictions or conditions." The examiner recommended that Respondent's work hours be limited,
28

1 that he be subject to ongoing random alcohol and drug testing, psychotherapy, restrictions on his
2 ability to prescribe controlled substances, and regular 12-step group attendance.

3 **DISCIPLINARY CONSIDERATIONS**

4 18. To determine the degree of discipline, if any, to be imposed on Respondent,
5 Complainant alleges that on October 26, 2017, an Amended Interim Suspension Order was issued
6 by the Office of Administrative Hearings which required, *inter alia*, that Respondent submit to
7 Biological Fluid Testing administered by the Board or its designee. This condition states, in
8 pertinent part, that "[i]f a biological fluid test result indicates respondent has used, consumed,
9 ingested, or administered to himself a prohibited substance," that the Board shall order
10 Respondent to cease practice. "Prohibited substance" is defined as "an illegal drug, a lawful drug
11 not prescribed or ordered by an appropriately licensed health care provider for use by respondent
12 and approved by the Board, alcohol, or any other substance the respondent has been instructed by
13 the Board not to use, consume, ingest, or administer to himself or herself."

14 19. On or about January 13, 2018, Respondent submitted a biological fluid sample which
15 later tested positive for metabolites of alcohol. The Board ordered Respondent to cease practice
16 on January 26, 2018.

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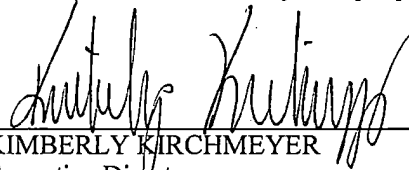
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G70273, issued to Todd David Spencer, M.D.;
2. Revoking, suspending or denying approval of Todd David Spencer, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Todd David Spencer, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: June 27, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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